IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. APP. NO.183/2007

Judgment delivered on: December 4, 2007

United India Insurance Co. Ltd. ..... Appellant.
Through: Mr.Pankaj Seth, Adv.

versus

Smt. Sona Devi & Ors. ..... Respondents
Through: Mr.Zainul Abedin, Adv. for respondent Nos.1 to 4.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

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The present appeal preferred under Section 173 of The Motor Vehicles Act, 1988, arises out of the award dated 11th

December, 2006 of the Motor Accident Claims Tribunal, whereby the Tribunal awarded a sum of Rs. 6,29,000/- along with interest @ 7% per annum to the claimants from the date of filing of the petition till its realisation.

The brief facts relevant for deciding the instant case are that on 20/5/1999, the deceased Sh. Shambu Rai was travelling on a scooter along with his friend Sh. Jitender Rai. At about 12 noon when they were plying on National Highway No. 8, Opposite Hotel Royal Palace, their scooter was hit by a truck bearing registration no. HR 38 8037, driven in a rash and negligent manner by its driver. As a result, Sh. Shambu Rai received fatal injuries and was removed to the Safdarjung Hospital from the accident site, where he was declared as “brought dead”. A claim petition was filed by widow and children of the deceased before the Motor Accident Claims Tribunal and award was made on 11/12/2006. Aggrieved with the said award present appeal is preferred by the appellant insurance company.

Present appeal is limited to the question of multiplier in as much as the deceased was aged 29 years and the learned tribunal adopted a multiplier of 18.

Sh. Pankaj Seth, counsel for the appellant insurance company contends that the tribunal has erred in applying the multiplier of 18.

Per contra, Sh. Zainul Abedin, counsel for respondents no. 1 to 4 has vehemently denied the said contention of the counsel for the appellant. The counsel urged that the award made by the tribunal is just and fair and even otherwise the present appeal is not maintainable as the defence under section 170 of MV Act was not been taken over by the appellant before the tribunal.

I have heard learned counsel for the parties and have perused the record.

On the preliminary objection raised by the respondents to the very maintainability of the appeal, I am of the view that the contention of the respondent is correct in this regard. Counsel for the respondent contends that the appellant had not taken over the defence of the owner and driver as envisaged under Section 170 of the Motor Vehicles Act and, therefore, is debarred from challenging the impugned award so as to assail the findings of the Tribunal on the quantum of compensation.

The contention of counsel for the respondent is that right to file an appeal is a statutory right and the insurer can assail the findings of the Tribunal only under Section 149(2) of the Motor Vehicles Act. Counsel further contends that it is only in a case where there is collusion between the claimants and the insured, the insurer can assail the findings of the Tribunal on the grounds of quantum as well as negligence subject however to the condition that the insurer had taken permission of the Court to take over the defence of the owner or driver as the case may be as envisaged under Section 170 of the Motor Vehicles Act. No such permission was sought by the appellant under Section 170 of the Motor Vehicles Act by the Tribunal and, therefore, in the absence of the same, the appellant being the insurer of the offending vehicle cannot maintain the present appeal on grounds other than those available to it under Section 149(2) of the Motor Vehicles Act.

Per contra, counsel for the appellant vehemently disputes this position and contends that the insurer cannot be rendered remedlyless especially in a case where the Tribunal has awarded an excessive amount of compensation in favour of the

claimants ignoring all basic principles of law for the award of compensation. Counsel for the appellant has also placed reliance on the judgment of the Supreme Court reported in *2007 (9) Scale 216*, **New India Assurance Company Ltd. Vs. Smt. Shanti Pathak & Ors.** to contend that the Apex Court had interfered to lower down the compensation amount even in a case where the insurer had not taken any permission from the Court under Section 170 of the Motor Vehicles Act. Counsel for the appellant also contends that the Hon'ble Supreme Court has already referred the said issue of lack of competence of the insurer to assail the findings of the Tribunal on the ground of quantum of compensation and negligence to a larger Bench and, therefore, this Court may follow the decision of the Supreme Court in this regard.

After having given my thoughtful and conscious consideration to the issue involved in the present case, I am of the view that the issue is no more res integra as in the judgments cited by the respondent, the Hon'ble Supreme Court has authoritatively held that in the absence of permission sought from the Court as envisaged under Section 170 of the Motor Vehicles

Act, the insurer has no right to file an appeal to challenge the quantum of compensation or finding of the Tribunal as regards the negligence or contributory negligence of offending vehicles is concerned. It would be appropriate to refer Section 170 of the Motor Vehicles Act as under:-

> "**170. Impleading insurer in certain cases**- Where in the course of any inquiry the Claims Tribunal is satisfied that -
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> (a) there is collusion between the person making the claim and the person against whom the claim is made, or
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> (b) the person against whom the claim is made has failed to contest the claim,
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> It may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made."

It is an admitted case between the parties that no such permission under Section 170 of the Motor Vehicles Act was sought by the appellant which clearly means that the procedure laid down under Section 170 of the Motor Vehicles Act was not

followed. In the judgment of the Supreme Court reported in (*1998) 3 SCC 140,* ***Shankarayya Vs. United India Insurance Co. Ltd.,*** the Supreme Court has held that the insurance company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions mentioned in Section 170 are found to be satisfied and for that purpose the insurance company has to obtain an order in writing from the Tribunal and such an order should be a reasoned order of the Tribunal. In such circumstances unless the said procedure is followed, the appellant insurer cannot have a wider defence on merits than what is available to it by way of a statutory defence. RElevant part of Para 4 of the said judgment in this regard is referred as under:-

> "**4.** It clearly shows that the Insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the Insurance Company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence. "

In another judgment of the Apex Court entitled **National Insurance Co. Ltd. v. Nicolletta Rohtagi,** *(2002) 7 SCC 456*, it was observed as under:-

> **"25.** We have earlier noticed that motor vehicle accident claim is a tortious claim directed against tortfeasors who are the insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory liability created under the Motor Vehicles Act. The legislature has ensured by enacting Section 149 of the Act that the victims of motor vehicle are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in Section 149(2) of the Act or where the condition precedent specified in Section 170 is satisfied.
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> **26.** For the aforesaid reasons, an insurer if aggrieved against an award, may file an appeal only on those grounds and no other. However, by virtue of Section 170 of the 1988 Act, where in course of an enquiry the Claims Tribunal is satisfied that (*a*) there is a collusion between the person making a claim and the person against whom the claim has been made, or (*b*) the person against whom the claim has been made has failed to contest the claim, the Tribunal may, for reasons to be recorded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are available to the insured or to the person against whom the claim has been made. Thus, unless an order is passed by the Tribunal

> permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus where conditions precedent embodied in Section 170 are satisfied and award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. Sections 149, 170 and 173 are part of one scheme and if we give any different interpretation to Section 173 of the 1988 Act, the same would go contrary to the scheme and object of the Act."

In view of the said legal position, I cannot appreciate the argument of counsel for the appellant that even without seeking permission of the Court as required under Section 170, the Appellant can proceed with the appeal. Once the application under Section 170 of the Motor Vehicles Act was preferred by the appellant before the Tribunal for taking over the defence of an owner or driver, the Tribunal is required to pass specific order and that too a reasoned order as per the observations of the Supreme Court referred above and, therefore, in the instant matter the argument of counsel for the appellant cannot be appreciated that

non-filing of an application under Section 170 of the Motor Vehicles Act by the appellant in this regard is no bar in preferring present appeal.

In the light of the above discussion, I do not find any merit in the submission of counsel for the appellant. The judgment cited by the counsel in **Shanti Pathak's** case (supra) has not dealt with the said legal proposition and, therefore, the same is not applicable in the facts and circumstances of the present case. Therefore, in view of the settled position of law the present appeal is not maintainable.

Even otherwise, the issue pertaining to the adoption of multiplier is no more res integra. In plethora of cases the Hon'ble Apex Court has held that the II Schedule can be taken as a guide in computing compensation and any deviation therefrom, should take place only on the peculiar facts and circumstances of the case. In this regard in **Abati Bezbaruah v. Dy. Director General, Geological Survey of India,(2003) 3 SCC 148** the Hon'ble Apex Court has observed as under:

> **"11.** It is now a well-settled principle of law that the payment of compensation on the basis of structured formula as provided for under the

> Second Schedule should not ordinarily be deviated from. Section 168 of the Motor Vehicles Act lays down the guidelines for determination of the amount of compensation in terms of Section 166 thereof. Deviation from the structured formula, however, as has been held by this Court, may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the facts and circumstances of each case."

The deceased at the time of the accident was 29 yrs of age and is survived by his widow and minor children, therefore, the multiplier of 18 adopted by the tribunal is as per the II Schedule to the Motor Vehicles Act, 1988. I do not find any force in the contention of the counsel for the appellant that the tribunal has not correctly applied the multiplier of 18 for the deceased aged 29 years.

In view of the above discussion, the appeal is dismissed.

December , 2007 **KAILASH GAMBHIR J.**